

# City of Santa Barbara California

## CITY OF SANTA BARBARA PLANNING COMMISSION

### RESOLUTION NO. 013-05

316 W. ORTEGA STREET

MODIFICATIONS AND TENTATIVE SUBDIVISION MAP

FEBRUARY 24, 2005

**APPLICATION OF FERGUSON-ETTINGER ARCHITECTS, INC., AGENT FOR VIEJO CAPITAL, LLC, PROPERTY OWNER, 316 W. ORTEGA STREET, APN 037-073-013, R-4: HOTEL-MOTEL-MULTIPLE RESIDENCE ZONE, GENERAL PLAN DESIGNATION: RESIDENTIAL, 12 UNITS PER ACRE (MST2003-00361)**

The subject project consists of a proposal for three new residential condominium units on a 10,500 square foot lot. Unit 1 would be a 1,540 square foot three-bedroom unit, Unit 2 would be 1,469 square foot three-bedroom unit, and Unit 3 would be 1,029 square foot two-bedroom unit. Each unit would have two covered parking spaces. The existing single family residence, detached garage and sheds would be demolished. The project site is located adjacent to Mission Creek. A modification request to allow deck, deck support, and eave encroachments into the twenty-five foot creek setback has been approved by the Chief Building Official in accordance with SBMC§28.87.250.

The discretionary applications required for this project are:

1. Modification to allow the encroachment of covered porch and steps of first floor into the front yard setback (SBMC§28.21.060);
2. Modification to allow the encroachment of eaves of first floor of Unit 1 into the interior yard setback (SBMC§28.21.060);
3. Modification to allow the encroachment of garage of Unit 3 into interior yard setback (SBMC§28.21.060); and
4. Tentative Subdivision Map for a one-lot subdivision to create three (3) residential condominium units (SBMC§27.07 and 27.13).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15303 (new construction of small structures).

**WHEREAS**, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

**WHEREAS**, two people appeared to speak in favor of the application, and one person appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, February 3, 2005.
2. Continuance from meeting of February 10, 2005.

3. Applicant's Proposed Conditions of Approval
4. Revised 11" x 17" Plans

**NOW, THEREFORE BE IT RESOLVED** that the City Planning Commission:

- I. Approved the subject application making the following findings and determinations:

**A. MODIFICATION FINDINGS – YARD REGULATIONS (SBMC §28.21.060)**

The modifications are consistent with the purposes and intent of the Zoning Ordinance and are necessary to secure an appropriate improvement on a lot.

*The developable area on the parcel is constrained by the twenty-five foot Mission Creek setback which comprises approximately 27% of the parcel. The minor encroachments into the required setbacks are necessary to secure an appropriate improvement on the lot.*

**B. TENTATIVE SUBDIVISION MAP FINDINGS (SBMC §27.07.100)**

The tentative subdivision map is consistent with the General Plan and the Zoning Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed development, the project is consistent with the variable density provisions of the Municipal Code and the General Plan, and the proposed use is consistent with the vision for this neighborhood of the General Plan. The design of the project will not cause substantial environmental damage, and associated improvements will not cause serious public health problems.

**C. RESIDENTIAL CONDOMINIUM DEVELOPMENT FINDINGS (SBMC §27.13.080)**

1. There is compliance with all provisions of the City's Condominium Ordinance;

*The project complies with the physical standards for condominiums related to parking, private storage space, utility metering, laundry facilities, density, and outdoor living space requirements.*

2. The proposed development is consistent with the General Plan of the City of Santa Barbara; and

*The three-unit residential condominium development is consistent with the General Plan designation of 12 units per acre.*

3. The proposed development is consistent with the principles of sound community planning and will not have an adverse impact upon the neighborhood's aesthetics, parks, streets, traffic, parking and other community facilities and resources.

*The project is an infill residential project proposed in an area where residential development is a permitted use. The project is adequately served by a public street, will provide adequate parking to meet the demands of the project and will not result in traffic impacts. The design has been reviewed by the Architectural Board of Review, which found the architectural design appropriate to the site and*

*the surrounding neighborhood.*

II. Said approval is subject to the following conditions:

- A. **Recorded Agreement.** Prior to the issuance of any Public Works permit or Building permit for the project on the Real Property, the following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be recorded by the Owner with the Parcel Map in an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property" which shall be reviewed as to form by the City Attorney and as to content by the Public Works Director and the Community Development Director:
  1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural water courses, conduits and any access road, as appropriate. The Owner is responsible for the adequacy of any drainage facilities and for the continued maintenance thereof in a manner that will preclude any hazard to life, health or damage to the Real Property or any adjoining property.
  2. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats or trailers shall be stored on the Real Property.
  3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan as approved by the Architectural Board of Review (ABR). Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan.
  4. **Allowed Development.** The development of the Real Property approved by the Planning Commission on February 24, 2005 is limited to 1,978 square feet of building area for Unit 1; 1,914 square feet of building area for Unit 2, and 1,464 square feet of building area for Unit 3 and the improvements shown on the Tentative Subdivision Map and Development Plan signed by the chairman of the Planning Commission on said date and on file at the City of Santa Barbara.
  5. **Required Private Covenants.** The Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:
    - a. **Common Area Maintenance.** An express method for the appropriate and regular maintenance of the common areas, common access ways, common utilities and other similar shared or common facilities or improvements of the development, including the private storm drain system and shared sewer

laterals, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium parcels.

- b. **Garages Available for Parking.** A covenant that includes a requirement that all garages be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the garages were designed and permitted.
  - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
  - d. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition and which also provides that such covenants may be enforced by the owners' association in accordance with the requirements of the state Subdivision Sales Law.
6. **Biological Resources Study Requirements.** The Owner shall implement the recommendations of the April 2004 Biological Resources Study prepared by URS Corporation as follows:
- a. The plant species mix for the open space adjacent to the creek should include coast live oak and arroyo willow.
  - b. Willow, cottonwood, or sycamore trees should be planted along the top of the bank at the edge of the parcel boundary to stabilize the slope and to create shade that will discourage the proliferation of the non-native plants that occur on the lower slopes. Similarly, blackberry plants should be considered for the same area to create a barrier along the top of the bank between the creek and the parcel, and to out-compete the non-native plants on the lower portions of the bank.
  - c. If the adjacent landowner is amenable, the non-native plants on the west bank of Mission Creek directly below the subject parcel would be removed and replaced with native plants to complete the restoration of this 60-foot long reach of Mission Creek. This restoration should only be pursued if the design and installation would not destabilize the creek bank at this location.
  - d. Fencing along the property boundary adjacent to the creek should have openings to allow small mammal passage between the open space and the creek.



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3. The proposed development is consistent with the principles of sound community planning and will not have an adverse impact upon the neighborhood's aesthetics, parks, streets, traffic, parking and other community facilities and resources.  
*The project is an infill residential project proposed in an area where residential development is a permitted use. The project is adequately served by a public street, will provide adequate parking to meet the demands of the project and will not result in traffic impacts. The design has been reviewed by the Architectural Board of Review, which found the architectural design appropriate to the site and*

*the surrounding neighborhood.*

II. Said approval is subject to the following conditions:

- A. **Recorded Agreement.** Prior to the issuance of any Public Works permit or Building permit for the project on the Real Property, the following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be recorded by the Owner with the Parcel Map in an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property" which shall be reviewed as to form by the City Attorney and as to content by the Public Works Director and the Community Development Director:
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  5. **Required Private Covenants.** The Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:
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  - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
  - d. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition and which also provides that such covenants may be enforced by the owners' association in accordance with the requirements of the state Subdivision Sales Law.
6. **Biological Resources Study Requirements.** The Owner shall implement the recommendations of the April 2004 Biological Resources Study prepared by URS Corporation as follows:
- a. The plant species mix for the open space adjacent to the creek should include coast live oak and arroyo willow.
  - b. Willow, cottonwood, or sycamore trees should be planted along the top of the bank at the edge of the parcel boundary to stabilize the slope and to create shade that will discourage the proliferation of the non-native plants that occur on the lower slopes. Similarly, blackberry plants should be considered for the same area to create a barrier along the top of the bank between the creek and the parcel, and to out-compete the non-native plants on the lower portions of the bank.
  - c. If the adjacent landowner is amenable, the non-native plants on the west bank of Mission Creek directly below the subject parcel would be removed and replaced with native plants to complete the restoration of this 60-foot long reach of Mission Creek. This restoration should only be pursued if the design and installation would not destabilize the creek bank at this location.
  - d. Fencing along the property boundary adjacent to the creek should have openings to allow small mammal passage between the open space and the creek.



- e. Low-intensity, directional lighting should be used on the sides of the structures facing the creek to reduce impacts to nighttime wildlife activity.
  - f. Standard Best Management Practices (BMPs) should be employed to prevent human intrusion into the creek during construction and to prevent bank erosion during and after the landscaping work on the upper creek bank.
- 7. **Lighting.** Exterior lighting, where provided, shall be consistent with the City's Lighting Ordinance. No floodlights shall be allowed. Lighting shall be directed toward the ground.
- 8. **Pesticide and Fertilizer Usage Near Creeks.** The use of pesticides and fertilizer shall be prohibited within the area draining directly into Mission Creek.
- B. **Public Works Submittal.** The Owner shall submit the following or evidence of completion of the following to the Public Works Department prior to the recordation of the Parcel Map or issuance of a Building permit or Public Works permit.
  - 1. **Parcel Map.** The Owner shall submit to the Public Works Department, a Parcel Map prepared by a licensed land surveyor or registered Civil Engineer. The Parcel Map shall conform to the requirements of the City Survey Control Ordinance.
  - 2. **Water Rights Assignment.** Owner shall assign to the City of Santa Barbara the exclusive right to extract water from under the Real Property.
  - 3. **Street Improvement Plans.** The Owner shall submit building plans for construction of improvements along the subject property road frontage on Ortega Street. As determined by the Public Works Department, the improvements shall include City standard sidewalk, driveway apron modified to meet Title 24 requirements, curbs, gutters, crack seal to the centerline of the street along entire subject property frontage, underground service utilities, drainage system including new A470 Curb Drain Outlet, supply and install new residential style street light as approved by Architectural Board of Review and Facilities Maintenance, City crews to retire existing light from power pole upon installation of new street light, preserve and/or reset contractor stamp and/or survey monuments, storm drain stenciling, private on-site drainage system, drought-tolerant parkway landscaping, new street tree approved by the City Arborist, and provide adequate positive drainage from site. Where tree roots are the cause of the damage, the roots are to be pruned under the direction of the City Arborist. The building plans shall be prepared

by a registered civil engineer or licensed architect and reviewed by the City Engineer.

4. **Storm Drain Operations and Maintenance Procedure Plan.** The Owner(s) shall maintain drainage system, storm drain water interceptor and other storm water pollution control devices in accordance with the Operations and Maintenance Procedure Plan approved by the City Engineer.
5. **Storm Water Quality Control Guidelines.** The Owner shall apply storm water quality control guidelines to the project per the Public Works Department Construction Project Best Management Practices.

C. **Design Review.** The following revisions to the architectural plans are subject to the review and approval of the Architectural Board of Review (ABR):

1. The three (3) covered balconies on the second floor of Unit 1 shall be removed.
2. The two (2) covered balconies on the second floor of Unit 2 shall be removed.
3. Provide at least the minimum private open yard space for Unit 2 required by the Zoning Ordinance on the 2<sup>nd</sup> floor or above.
4. Provide the private open yard space required by the Zoning Ordinance for Unit 3 on the second floor.
5. Encroachments into the required Mission Creek setback shall be prohibited below the level of the 2<sup>nd</sup> floor.
6. The second floor deck of Unit 3 that would encroach into the rear setback shall be removed.
7. Consider changes to the project's architectural style and detail to be compatible with the "Victorian" structures within the immediate neighborhood.

D. **Building Permit Plan Requirements.** The following requirements shall be incorporated into the construction plans submitted to the Building and Safety Division with applications for building permits. All of these construction requirements shall be carried out in the field and completed prior to the issuance of a Certificate of Occupancy.

1. **Unanticipated Archaeological Resources Contractor Notification.** Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts associated with past human occupation of the parcel. If such archaeological resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and an archaeologist from the most current City Qualified Archaeologists List shall be retained by the

applicant. The latter shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City qualified Barbareño Chumash Site Monitors List, etc.

If the discovery consists of possible human remains, the Santa Barbara County Coroner shall be contacted immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. A Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

If the discovery consists of possible prehistoric or Native American artifacts or materials, a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

2. **Photographic Documentation.** Prior to demolition of the single-family residence, the building shall be documented using large format black and white archival photography according to the City's standards for documentation. Two copies of these photographs (one including the negatives) shall be submitted in separate binders to the City Planning Division.
3. **Construction Best Management Practices.** New development projects shall address water quality through the use of Best Management Practices (BMPs) per the list provided by the Public Works Department and applied as determined to be appropriate by the City. Furthermore, projects shall seek to reduce post-development runoff volumes through such measures as infiltration, evapo-transpiration, and storage/reuse.
4. **Trash and Recycling Provision.** An area for trash and recycling containers shall be provided for each unit on the Real Property.
5. **Demolition/Construction Materials Recycling.** Recycling and/or reuse of demolition/construction materials shall be carried out and containers shall be provided on site for that purpose in order to minimize construction-generated waste conveyed to the landfill.

6. **Utilities.** Provide individual water, electricity, gas meter, and building sewer for each residential unit. Service lines for each unit shall be separate until a point five (5) feet outside the building.
7. **Water-Conserving Fixtures.** All plumbing fixtures shall be water-conserving devices in new construction subject to the approval of the Water Resources Management Staff.
8. **Water Sprinkling During Grading.** During site grading and transportation of fill materials, regular water sprinkling shall occur using reclaimed water whenever the Public Works Director determines that it is reasonably available. During clearing, grading, earth moving or excavation, sufficient quantities of water, through use of either water trucks or sprinkler systems, shall be applied to prevent dust from leaving the site. Each day, after construction activities cease, the entire area of disturbed soil shall be sufficiently moistened to create a crust.

Throughout construction, water trucks or sprinkler systems shall also be used to keep all areas of vehicle movement damp enough to prevent dust raised from leaving the site. At a minimum, this will include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency will be required whenever the wind speed exceeds 15 mph.
9. **Covered Truck Loads.** Trucks transporting fill material to and from the site shall be covered from the point of origin.
10. **Disturbed Soil Stabilization.** After clearing, grading, earth moving and/or excavation is completed, the entire area of disturbed soil shall be treated to prevent wind pickup of soil. This may be accomplished by:
  - a. Seeding and watering until grass cover is grown;
  - b. Spreading soil binders;
  - c. Sufficiently wetting the area down to form a crust on the surface with repeated soakings as necessary to maintain the crust and prevent dust pickup by the wind; or
  - d. Other methods approved in advance by the Air Pollution Control District.
11. **Expeditious Paving.** All roadways, driveways, sidewalks, etc., shall be paved as soon as possible. Additionally, building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
12. **Construction-Related Truck Trips.** Construction-related truck trips shall not be scheduled during peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) to help reduce truck traffic on adjacent streets and roadways.

13. **Construction Hours.** Construction (including preparation for construction work) is prohibited Monday through Friday before 8:00 a.m. and after 5:00 p.m., and all day on Saturdays, Sundays and holidays observed by the City of Santa Barbara as shown below:

New Year's Day	January 1 <sup>st</sup> *
Martin Luther King's Birthday	3 <sup>rd</sup> Monday in January
Presidents' Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 <sup>th</sup> *
Labor Day	1 <sup>st</sup> Monday in September
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Following Thanksgiving Day	Friday after Thanksgiving Day
Christmas Day	December 25 <sup>th</sup> *

\*When a holiday falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, shall be observed as a legal holiday.

Notwithstanding the prohibition above, when, based on required construction type or other appropriate reasons, it is necessary to do work at night, contractor may contact the Chief of Building and Safety to request a waiver from the above construction hours, using the procedure outlined in SBMC § 9.16.015 Construction Work at Night. Contractor shall notify all residents within 300 feet of the parcel of the intent to carry out night construction a minimum of 48 hours prior to said construction. Said notification shall include what the work includes, the reason for the work, the duration of the proposed work and a contact number.

14. **Construction Contact Sign.** Immediately after building permit issuance, signage shall be posted at the points of entry to the site that list the contractor(s) name, contractor(s) telephone number, work hours and site rules to assist Building Inspectors and Police Officers in the enforcement of the conditions of approval.
15. **Conditions on Plans/Signatures.** All Planning Commission Conditions of Approval shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

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Property Owner

Date

---

Contractor

Date

License No.

---

Architect

Date

License No.

---

Engineer

Date

License No.

E. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:

1. **Repair Damaged Public Improvements.** Repair any damaged public improvements (curbs, gutters, sidewalks, etc.) subject to the review and approval of the Public Works Department.
2. **Complete Public Improvements.** Public improvements as shown on the building plans.
3. **Cross Connection Inspection.** The Owner shall request a cross connection inspection by the Public Works Water Reclamation/Cross Connection Specialist.

F. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent

acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses and costs of that independent defense.

**NOTICE OF MODIFICATION APPROVAL TIME LIMITS:**

The Planning Commission's action approving the Modifications shall terminate if a building permit is not sought within twelve (12) months of granting of the approval and construction diligently pursued to completion and issuance of a certificate of occupancy. Pursuant to section 28.87.360 of the Municipal Code, the Community Development Director may grant an extension to the twelve (12) month period.

SBMC§28.87.360 states that modifications are valid for one year following Planning Commission's approval. Said section also allows the Community Development Director to approve time extensions for such approvals. Because this approval is tied to the Tentative Subdivision Map approval, the Director hereby approves an extension to coincide with the Tentative Subdivision Map.


**NOTICE OF TENTATIVE SUBDIVISION MAP TIME LIMITS:**

The Planning Commission's action approving the Tentative Map shall expire two (2) years from the date of approval. The subdivider may request an extension of this time period in accordance with Santa Barbara Municipal Code section 27.07.110 or the provisions of the California Subdivision Map Act.

This motion was passed and adopted on the 24th day of February, 2005 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 1 ABSTAIN: 0 ABSENT: 0

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Planning Commission at its meeting of the above date.

  
Liz N. Ruiz, Planning Commission Secretary

8-11-05  
Date

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.

